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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL ANGEL MENDOZA-
CALVILLO; et al. ^{*},

Petitioner,

v.

ALBERTO GONZALES, Attorney General,

Respondent.

No. 04-75533

Agency Nos. A75-666-175
A78-111-732

MEMORANDUM^{**}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006^{***}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Miguel Angel Mendoza-Calvillo and Maria Guadalupe De La Cruz-Arroyo,

^{*} The clerk is directed to correct the docket to reflect the correct spelling of petitioner's name.

^{**} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

^{***} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's order denying their applications for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review questions of law de novo. *Tapia v. Gonzales*, 430 F.3d 997, 999 (9th Cir. 2005). We grant in part and deny in part in part the petition for review.

An intervening change in the law requires us to remand the petition with respect to Mendoza-Calvillo. The BIA concluded that Mendoza-Calvillo could not establish good moral character for purposes of his cancellation of removal application because he testified that he paid a smuggler to assist his wife to enter the United States without inspection. *See* 8 U.S.C. §§ 1101(f)(3), 1182(a)(6)(E)(i) (alien smuggler may not establish good moral character). The agency, however, did not have the benefit of this court's recent decision in *Moran v. Ashcroft*, 395 F.3d 1089, 1093-94 (9th Cir. 2005) (cancellation of removal application not barred by alien smuggling provision where applicant assisted spouse, parent or son or daughter to enter the United States). Because Mendoza-Calvillo assisted his wife to enter the United States unlawfully, he remains eligible for cancellation of removal.

The BIA correctly determined that De La Cruz-Arroyo's prior order of expedited removal ended her accrual of continuous physical presence. *See Vasquez-Lopez v. Ashcroft*, 343 F.3d 961 (9th Cir. 2003) (administrative order of removal interrupts period of continuous physical presence); *Tapia*, 430 F.3d at 1002-04 (distinguishing an expedited removal order from a departure not made under threat of deportation).

Petitioners' remaining contentions lack merit.

PETITION FOR REVIEW GRANTED as to Miguel Angel Mendoza-Calvillo; REMANDED.

PETITION FOR REVIEW DENIED as to Maria Guadalupe De La Cruz-Arroyo.